

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
NEW CO-OPERATIVE, INC.	NO. 2016-AQ- 24

To: New Co-operative, Inc.
Robert Dobson
Registered Agent
2626-1st Avenue South
Fort Dodge, Iowa 50501

New Co-operative, Inc.
Kent Nolting
Feed Department Manager
2626 – 1st Avenue South
PO Box 818
Fort Dodge, Iowa 50501

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and New Co-operative, Inc., (New Co-operative) for the purpose of resolving air quality permit violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Amber Wolf
Iowa Department of Natural Resources
Field Office No. 3
1900 Grand Ave, Suite E-17
Spencer, Iowa 51301

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515-725-9551

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567

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Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

New Co-operative neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. New Co-operative has a grain elevator and feed mill facility located at 205 East Center in Pomeroy, Iowa. New Co-operative began construction of its feed mill at this location without obtaining air quality construction permits or otherwise providing notice of the initiation of construction to DNR, as required.

2. On November 10, 2015, New Co-operative submitted nine air quality construction permit applications to DNR for a proposed feed mill at its Pomeroy, Iowa, facility. The permit applications were for two boilers, a grain receiving conveyor, a mixed feed conveyor, a hammer mill conveyor, a roller mill conveyor, two pellet coolers, and an indoor feed loadout. The appropriate permits were issued on April 8, 2016. However, New Co-operative initiated construction prior to permit issuance, and continued construction when DNR directed that construction to cease.

3. At the time the permit applications were submitted in November 2015, New Co-operative had not decided whether the feed mill project (DNR Construction Permit Project No. 15-398) would be subject to the federal regulations known as National Emission Standard for Hazardous Air Pollutants (NESHAP) for Prepared Feeds Manufacturing Facilities, located at 40 Code of Federal Regulations Part 63, Subpart DDDDDDD (NESHAP Subpart 7D), since New Co-operative had not determined whether the facility would use chromium or magnesium additives in amounts above the limits found in NESHAP Subpart 7D. NESHAP Subpart 7D has been adopted by reference by DNR at 567 IAC 23.1(4)fd".

4. Facility-wide air quality dispersion modeling was required and conducted by DNR prior to permit issuance, since the emissions for Construction Permit Project No. 15-398 were projected to be over the modeling Significant Emission Rates for PM10 and PM2.5. At the request of the company, DNR air quality dispersion modeling staff reviewed fourteen different modeling scenarios during the period November 2015 through April 2016. Modeling results repeatedly indicated that construction as proposed could not reasonably be expected to comply with all applicable emissions standards. Information also was provided by the company that the projected dispersion of emissions from the feed mill had the potential to negatively affect a nearby residential neighborhood.

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5. During the period November 2015 through March 2016, DNR worked with New Co-operative, without success, in an effort to find a solution to the air quality dispersion modeling issues. Although various solutions were proposed by DNR, DNR and New Co-operative were not able to resolve the issues.

6. In March 2016, New Co-operative hired an engineering consulting firm. Following consultation with the engineering consulting firm, New Co-operative decided not to use any chromium or magnesium additives, so that the emissions from the facility would not be subject to the NESHAP Subpart 7D requirements. Once it was established that the feed mill would not be subject to the NESHAP Subpart 7D requirements, New Co-operative also was able to request and receive permit exemptions for the two boilers, the grain receiving conveyor, the mixed feed conveyor, and the indoor feed loadout, pursuant to the provisions of 567 IAC rule 22.1(2)"w". All of these emission points, except the indoor feed loadout, could then be removed from the model because they did not cause an air quality issue with the National Ambient Air Quality Standards (NAAQS).

7. New Co-operative and DNR also were able to agree upon other changes that allowed the air quality dispersion modeling to demonstrate that construction as proposed could reasonably be expected to comply with all applicable emissions standards, and that issuance of the construction permits was appropriate.

8. Construction permits for the hammer mill conveyor, the roller mill conveyor, and the two pellet coolers were issued on April 8, 2016.

9. On January 19, 2016, prior to issuance of the permits, Environmental Specialist Amber Wolf of DNR Field Office No. 3 observed construction occurring at the New Co-operative location in Pomeroy.

10. On January 20, 2016, Ms. Wolf contacted the DNR Air Quality Bureau to determine whether applications for air quality construction permits had been submitted to DNR, as required, and whether air quality construction permits had been issued to the New Co-operative Pomeroy facility. Additionally, Ms. Wolf asked whether notification of construction had been submitted to DNR, to allow the facility to initiate construction prior to permit issuance according to the provisions of 567 IAC 22.1(1)"c".

11. On January 21, 2016, Ann Seda, Environmental Specialist for the DNR Air Quality Bureau, informed Ms. Wolf that permit applications had been received for a feed mill at the New Co-operative Pomeroy facility, but permits had not yet been issued. Also, no notification stating that construction had begun had been received by the DNR Air Quality Bureau.

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12. Also on January 21, 2016, Ms. Wolf verbally informed Melanie Aanonson of New Co-operative that a Letter of Non-Compliance would be issued by DNR to New Co-operative for failure to obtain construction permits and failure to notify DNR of construction prior to beginning construction.

13. On January 22, 2016, DNR informed New Co-operative in an email that New Co-operative was in violation of the requirement to obtain construction permits prior to construction. The email stated that construction should cease until construction permits were issued by DNR.

14. On January 26, 2016, Ms. Wolf sent a Letter of Non-Compliance to New Co-operative citing a violation of the requirement to obtain construction permits prior to construction.

15. On March 8, 2016, Ms. Wolf visited the Pomeroy New Co-operative site, and observed that construction of the feed mill was still occurring. DNR construction permits had not yet been issued.

16. On March 29, 2016, a Notice of Violation letter was issued to New Co-operative citing the continuing violation of construction without construction permits.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. Iowa Code section 455B.134(3) provides that the Director of DNR shall grant, modify, suspend, terminate, revoke, reissue or deny permits for the construction or operation of new, modified, or existing air contaminant sources and for related control equipment.

3. Pursuant to Iowa Code sections 455B.133 and 455B.134, 567 IAC 22.1(1) was adopted, which requires that, unless an exemption applies, no person shall construct, install, reconstruct, or alter any equipment or control equipment without first obtaining a construction permit. Rule 22.1(1) also states that a permit shall be obtained prior to the initiation of construction, installation or alteration of any portion of the stationary source. No permit was obtained prior to the initiation of construction. No exemption applies in this case.

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4. Rule 22.1(1)"c" allows for sources to initiate construction prior to issue of construction permits in specified circumstances, which include the submission of construction permit applications, written notification to DNR five working days prior to initiating construction, and a lack of the applicability of certain other specific permitting requirements, including the applicability of NESHAP Subpart 7D, adopted by reference at 567 IAC 23.1(4)"fd". Also, this rule provides that the facility may not connect the equipment to a stack or operate the equipment prior to permit issuance. Finally, this rule requires that the applicant must notify DNR in writing of the date that construction actually started by no later than 30 days following the initiation of construction. First, New Co-operative was not eligible to use this provision of the rules to initiate construction prior to permit issuance until New Co-operative made the determination that it would not be subject to NESHAP Subpart 7D in March 2016, but New Co-operative began construction prior to that determination in January 2016. Second, DNR was not notified five working days prior to the initiation of any construction in this case, and DNR was not notified of the initiation of construction within 30 days following the initiation of construction.

5. Rule 22.3(1) states that a construction permit may be issued when the director concludes that, among other things, the required plans and specifications represent equipment which reasonably can be expected to comply with all applicable emission standards; and that the expected emissions from the proposed source or modification in conjunction with all other emissions will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. The modeling conducted prior to permit issuance indicated that construction as proposed could not reasonably be expected to comply with all applicable emissions standards and to ensure compliance with the ambient air quality standards. Therefore, permit issuance was not possible until resolution could be reached.

V. ORDER

THEREFORE, DNR orders and New Co-operative agrees to the following:

1. New Co-operative shall provide to DNR in writing the dates that construction on the feed mill began; and shall, pursuant to the requirements of the permits issued on April 8, 2016, provide to the DNR the actual date of startup of the feed mill; and

2. Within 30 days of the date this order is signed by the Director, New Co-operative shall pay a penalty of \$6,000.00.

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VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$6,000.00 is assessed by this administrative consent order. The penalty must be paid within 30 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – New Co-operative has saved time and money by failing to obtain air quality construction permits prior to the initiation of construction at its Pomeroy facility. Further, New Co-operative has continued construction at its Pomeroy facility despite being specifically informed by DNR on three separate occasions that violations were occurring and on two separate occasions that construction should cease until the issuance of construction permits. New Co-operative has the potential to begin operation of the feed mill sooner due to these violations. Therefore, \$1,000.00 is assessed for economic benefit.

Gravity of the Violation – By constructing without permits and by failing to notify DNR of construction, New Co-operative has threatened the integrity of the regulatory program. Therefore, the amount of \$2,000.00 is assessed for gravity.

Culpability – New Co-operative failed to cease construction after specifically being instructed by DNR to do so on three separate occasions, once verbally and twice in writing. Therefore, \$3,000.00 is assessed for culpability.


VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of New Co-operative. For that reason, New Co-operative waives its right to appeal this order or any part thereof.

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VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



Chuck Gipp, Director
Iowa Department of Natural Resources

Dated this 20th day of
December, 2016.



New Co-operative, Inc.

Dated this 13 day of
December, 2016.

DNR Field Office 3; Anne Preziosi; VII.C.2